

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

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|---------------------------|---|--------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 3:09-CR-49 |
| |) | (PHILLIPS/SHIRLEY) |
| PETER KO, and |) | |
| PAO C. LIU, |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This case came before the Court on June 16, 2009, for a scheduled pretrial conference and motion hearing on the defendants' Joint Motion for Continuance [Doc. 12], filed on June 4, 2009. Assistant United States Attorney Frank M. Dale, Jr., appeared on behalf of the government. Attorneys Charles M. Torres and Michael Graves represented Defendants Ko and Liu, respectively. Both defendants were present, and Defendant Liu participated with the aid of an interpreter.

In their motion, the defendants ask the Court to continue the June 24, 2009 trial date in order to allow defense counsel time to complete their review of discovery, to finish their investigation including the location and review of business and employment records, and to prepare for trial. In this respect, the defendants allege that counsel still need to interview twenty to thirty witnesses and employees, the majority of whom do not speak English and have moved away from

Knoxville. At the hearing, defense counsel confirmed that they were still trying to contact and interview potential witnesses in this case. Defense counsel confirmed that they had discussed the need for a continuance of the trial with the defendants. Upon questioning by the Court, the defendants acknowledged that they wanted their trial to be continued. The government did not object to the requested continuance.

The Court finds the Joint Motion for Continuance to be well taken and finds that the ends of justice served by granting a continuance outweigh the interest of the defendants and the public in a speedy trial. 18 U.S.C. § 3161(h)(7)(A). Noting the swiftly approaching June 24, 2009 trial date, the Court finds that the failure to grant a continuance would deprive the defendants of time to prepare for trial, especially in light of the fact that they need to interview potential witnesses. See 18 U.S.C. § 3161(h)(7)(B)(iv). Moreover, defense counsel requested that the Court set a new motion-filing deadline. If motions are ultimately filed, the Court will need time to conduct hearings on those motions and time, not to exceed thirty days, to rule upon such motions. See 18 U.S.C. § 3161(h)(1)(D) & (H). Finally, the parties will need time to prepare for trial in light of any such rulings. The Court finds that all of this could not take place before the June 24, 2009 trial date or in less than four months. Thus, without a continuance, counsel would not have the reasonable time necessary to prepare for trial despite their use of due diligence. See 18 U.S.C. § 3161(h)(7)(B)(iv).

Accordingly, the defendants' Joint Motion for Continuance [**Doc. 12**] is **GRANTED**, and the trial of this matter is reset to **October 13, 2009**. The Court also finds that all the time between the filing of the motion to continue on **June 4, 2009**, and the new trial date of **October 13, 2009**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein. See 18 U.S.C. § 3161(h)(1)(D), (H), and -(h)(7)(A)-(B). With regard to further scheduling, the Court

granted the defendants' oral request for a new motion-filing deadline. Motions are due on or before **July 16, 2009**. The deadline for responses is **July 30, 2009**. The parties are to appear before the undersigned for a pretrial conference and motion hearing on **August 5, 2009, at 1:30 p.m.** This date is also the new plea negotiation cut-off deadline.

Accordingly, it is **ORDERED**:

(1) The defendants' Joint Motion for Continuance [**Doc. 12**] is **GRANTED**;

(2) The trial of this matter is reset to commence on **October 13, 2009, at 9:00 a.m.**, before the Honorable Thomas W. Phillips, United States District Judge;

(3) All time between the filing of the motion to continue on **June 4, 2008**, and the new trial date of **October 13, 2009**, is fully excludable time under the Speedy Trial Act for the reasons set forth herein;

(4) The motion-filing deadline is **July 16, 2009**;

(5) Responses are due on or before **July 30, 2009**; and

(6) A pretrial conference and motion hearing is set for **August 5, 2009, at 1:30 p.m.** This date is also the plea negotiation cut-off deadline.

IT IS SO ORDERED.

ENTER:

s/ C. Clifford Shirley, Jr.
United States Magistrate Judge